

1 ADVOCATES FOR FAITH & FREEDOM
2 Mariah R. Gondeiro (SBN 323683)
3 mgondeiro@faith-freedom.com
4 Julianne Fleischer (SBN 337006)
5 jfleischer@faith-freedom.com
6 25026 Las Brisas Road
7 Murrieta, California 92562
8 Telephone: (951) 304-7583

9 Attorneys for Plaintiff **Jessica Tapia**

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
13

14 **JESSICA TAPIA**, an individual;

15 Plaintiff,

16 v.

17 **JURUPA UNIFIED SCHOOL**
18 **DISTRICT; TRENTON HANSEN**,
19 both in his personal capacity and in his
20 official capacity as the Jurupa Unified
21 School District Superintendent;
22 **DANIEL BROOKS**, both in his
23 personal capacity and in his official
24 capacity as Jurupa Unified School
25 District Assistant Superintendent;

26 Defendants.
27
28

Case No.: 5:23-cv-00789-FMO-E

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Contents

I. INTRODUCTION.....	1
II. LEGAL STANDARD.....	2
III. STATEMENT OF FACTS	2
IV. ARGUMENT	3
A. The Defendants waived any right to challenge the sufficiency of the Plaintiff’s constitutional claims.	3
B. The Plaintiff’s constitutional claims are not barred by qualified immunity because the Defendants knew that their conduct was unlawful.	4
C. The Plaintiff’s constitutional claims are not barred by the Eleventh Amendment because she seeks prospective injunctive relief.	8
V. CONCLUSION.....	9

I. INTRODUCTION

Defendants Jurupa Unified School District, Trenton Hansen, and Daniel Brooks’ (collectively, “Defendants”) Motion to Dismiss (“Motion”) does not address the sufficiency of Plaintiff Jessica Tapia’s claims, or the elements pled by her in each of the causes of action in her First Amended Complaint (“FAC”). Defendants’ Motion to Dismiss, ECF No. 25; First Amended Complaint, ECF No. 22. Instead, the Defendants attempt to justify their own discriminatory actions against the Plaintiff, frame her constitutional rights as second-class, and mischaracterize her protected actions. They fling baseless accusations that the Plaintiff refused to follow state and federal law, which is a deflection from the real issues of this lawsuit. The FAC is clear that the Plaintiff refused to follow the District-issued, District-created Directives because they violated her sincerely held religious beliefs and that the Defendants terminated the Plaintiff without just cause. The Defendants’ actions violated the Plaintiff’s constitutional rights. For the following reasons, the Defendants’ Motion should be denied.

First, the FAC alleges facts sufficient to show that the Defendants violated the Plaintiff’s rights under the Free Exercise Clause, Free Speech Clause, Due Process Clause, and First Amendment retaliation. The Defendants waived any right to address the sufficiency of the Plaintiff’s constitutional claims by failing to include their arguments in their Motion.

Second, the constitutional claims against the individual Defendants are not barred by qualified immunity because both Defendant Trenton Hansen and Defendant Daniel Brooks should have known that terminating the Plaintiff for adhering to her religious beliefs violated clearly established law.

Finally, the constitutional claims against the District and the individual Defendants, in their official capacities, are not barred by the Eleventh Amendment because Plaintiff seeks prospective injunctive relief.

In sum, the Defendants do not proffer any legitimate arguments that should

1 preclude this Court from reaching the merits of this case. The Defendants are simply
 2 grasping at straws to avoid being held accountable for their numerous and obvious
 3 constitutional transgressions against the Plaintiff. Accordingly, this Court should
 4 dismiss the Defendants' Motion to Dismiss.

5 II. LEGAL STANDARD

6 When deciding a Rule 12(b)(6) motion, "all well-pleaded allegations of
 7 material fact are taken as true and construed in a light most favorable to the non-
 8 moving party." *Wylar Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661
 9 (9th Cir. 1998). If the complaint provides fair notice of the claim and the factual
 10 allegations are sufficient to show that the right to relief is plausible, a court should
 11 deny the defendant's motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The
 12 standard is especially liberal when applied to the constitutional claims alleged in this
 13 action, which are governed by Rule 8. Rule 8's burden is "minimal," and requires
 14 only that the plaintiff provide "a short and plain statement of the claim showing that
 15 the pleader is entitled to relief." *Westways World Travel v. AMR Corp.*, 182 F. Supp.
 16 2d 952, 955 (C.D. Cal. 2001) (quotations omitted).

17 III. STATEMENT OF FACTS

18 For the past six years, the Plaintiff has been a caring, dedicated, and hard-
 19 working teacher in the Jurupa Unified School District ("District"). FAC, ¶¶ 19, 24-
 20 25. Her students respect and adore her. *Id.*, ¶¶ 24, 42. Yet, toward the end of the
 21 2021-2022 school year, the Plaintiff received a Notice of Unprofessional Conduct
 22 from the District, in which the District issued twelve meritless allegations against
 23 the Plaintiff. *Id.*, ¶¶ 38-41, 52. The District accused the Plaintiff of posting offensive
 24 content on her personal Instagram account, referencing her faith during
 25 conversations with students, and expressing controversial opinions on issues
 26 pertaining to gender identity. *Id.*, ¶¶ 40, 44-47.

27 Following these accusations, the Defendants gave the Plaintiff a set of
 28 Directives for her to follow in order to maintain employment with the District. *Id.*,

¶¶ 59-67. Among the Directives, the District required the Plaintiff to lie to parents about their children’s gender identity, refer to students by their preferred pronouns, and refrain from expressing her religious beliefs with students or on her social media, and allow students to use the bathroom or locker room that matched their preferred sex. *Id.*, ¶¶ 59, 61-62. When the Plaintiff informed the Defendants that due to her faith, she could not comply with the Directives, the Defendants, instead of accommodating her religious beliefs, terminated the Plaintiff’s employment. *Id.*, ¶¶ 68-72, 75, 77. They made no attempts to accommodate her religious beliefs. *Id.*, ¶¶ 79-84.

As a result, the Plaintiff filed the instant action against the Defendants alleging violations of the Free Exercise Clause, Free Speech Clause, Due Process Clause, First Amendment Retaliation, Title VII of the Civil Rights Act of 1964, and California’s Fair Employment and Housing Act. *Id.*, ¶¶ 105-72.

IV. ARGUMENT

A. The Defendants waived any right to challenge the sufficiency of the Plaintiff’s constitutional claims.

The Defendants argue that the Plaintiff’s constitutional claims should be dismissed for failure to state a claim. Mot. at 11-13. However, the Defendants do not attempt to challenge the sufficiency of the Plaintiff’s constitutional claims. And they cannot do so on reply because “[i]t is improper for a moving party to introduce new facts or different legal arguments in the reply brief than those presented in the moving papers.” *United States ex rel. Giles v. Sardie*, 191 F.Supp.2d 1117, 1127 (C.D. Cal. 2000); *see also State of Nev. v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (“[Parties] cannot raise a new issue for the first time in their reply briefs.” (citations omitted)); *Cedano–Viera v. Ashcroft*, 324 F.3d 1062, 1066 n.5 (9th Cir. 2003) (same); *Bazuaye v. INS*, 79 F.3d 118, 120 (9th Cir. 1996) (same). Because the Defendants did not address the sufficiency of the Plaintiff’s constitutional claims in their Motion and because they waived any right to challenge the sufficiency of the

1 Plaintiff's constitutional claims in their reply, the Plaintiff's constitutional claims
2 should move forward.

3 **B. The Plaintiff's constitutional claims are not barred by qualified immunity**
4 **because the Defendants knew that their conduct was unlawful.**

5 Instead of appropriately challenging the sufficiency of the Plaintiff's first,
6 second, third, and sixth causes of actions under Rule 12(b)(6), the Defendants raise
7 flawed affirmative defense arguments. To the extent the individual Defendants argue
8 that qualified immunity shields them from liability against the Plaintiff's
9 constitutional claims, that "is an affirmative defense that must be raised by a
10 defendant." *Groten v. Cal.*, 251 F.3d 844, 851 (9th Cir. 2001). "Thus, a Rule 12(b)(6)
11 dismissal is not appropriate unless [a court] can determine, based on the complaint
12 itself, that qualified immunity applies." *Id.*; *see also Ethridge v. Doe*, No. 1:12-CV-
13 02088-AWI, 2014 WL 6473654, at *6 (E.D. Cal. Nov. 18, 2014), report and
14 recommendation adopted sub nom. *Ethridge v. Lawrence*, No. 1:12-CV-02088-
15 AWI, 2015 WL 153821 (E.D. Cal. Jan. 12, 2015) (explaining that this is "because
16 facts necessary to establish this affirmative defense generally must be shown by
17 matters outside the complaint"). Thus, the Defendants must raise qualified immunity
18 as a defense and prove it at trial, after giving the Plaintiff an opportunity to gather
19 evidence to support her claims.

20 Even if this Court addresses qualified immunity at this stage, the Defendants'
21 arguments fail. Qualified immunity is a defense available for government officials,
22 but only if their conduct does not violate clearly established rights of which a
23 reasonable person would have known. *Pearson v. Callahan*, 555 U.S. 223, 231
24 (2009). Qualified immunity can be overcome by showing that two elements are met:
25 (1) a federal right (statutory or constitutional) has been violated, and (2) that right
26 was clearly established at the time the violation occurred. *Harlow v. Fitzgerald*, 457
27 U.S. 800, 818 (1982).

28 The Defendants fail to address the merits of qualified immunity, including

1 whether or not they violated any federal right and whether or not the Defendants
2 knew or should have known they violated established law. Thus, they waive any
3 right to address this issue in their reply. *Watkins*, 914 F.2d at 1560.

4 Rather than addressing the first prong of the qualified immunity test, the
5 Defendants deflect and claim that the Plaintiff was the one who was violating state
6 and federal law. Mot. at 15-18. Even if it were relevant that the Plaintiff was
7 compliant with state and federal law, the record is clear that the only objections that
8 the Plaintiff had were to the District's Directives—which are neither state or federal
9 law. FAC, ¶¶ 6, 68, 108, 118, 135. The Plaintiff's religious beliefs have not changed.
10 The Plaintiff's actions have not changed. She has conducted herself in the same
11 professional manner as when she first began working for the District. FAC, ¶¶ 24,
12 27-28, 30, 42.

13 Furthermore, rather than addressing the Plaintiff's constitutional claims, the
14 Defendants seek to justify their improper and illegal actions against the Plaintiff.
15 They rely on the proposition that their discriminatory treatment of the Plaintiff is
16 permissible because what they were doing was "objectively reasonable." Mot. at 17.
17 By forcing the Plaintiff to choose between her religious beliefs or maintaining public
18 employment, the Defendants claim they were deterring a myriad of *nonexistent*
19 lawsuits brought on by transgender students. Mot. at 16. In fact, they claim it was
20 "entirely reasonable" to terminate the Plaintiff because if they did not, *unnamed*,
21 *unidentified* transgender students *could* file a lawsuit against the Defendants. Mot.
22 at 18. There is no case law that supports the proposition that the mere potential of a
23 lawsuit by unidentified plaintiffs ever justifies a government official's disregard and
24 discrimination of a person's sincerely held religious beliefs. The Plaintiff alleges in
25 the FAC that the Defendants violated numerous federal rights, FAC, ¶¶ 114-15, 123-
26 36, yet the Defendants make no attempt to analyze whether a federal right has been
27 violated.

28 As to the second prong, to be clearly established law, the contours of a



1 constitutional right must be sufficiently clear so a reasonable official would
 2 understand his actions violate it. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).
 3 “Whether the law was clearly established is an objective standard; the defendant’s
 4 subjective understanding of the constitutionality of his or her conduct is irrelevant.”
 5 *Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1109 (9th Cir. 2011) (internal
 6 quotation marks and citation omitted). In this sense, the government official need
 7 only have “fair warning” that his conduct would deprive plaintiff of a constitutional
 8 right. *Hope v. Peizer*, 536 U.S. 730, 740 (2002) (citation omitted). Such warning was
 9 evident here and the Defendants should have heeded it. Again, the Defendants make
 10 no attempt to provide any substantive argument on this prong.

11 The individual Defendants knew or should have known their actions violated
 12 the Plaintiff’s constitutional rights. *See Jones v. Williams*, 791 F.3d 1023, 1033 (9th
 13 Cir. 2015) (“It was well established . . . and remains so today, that government action
 14 places a substantial burden on an individual’s right to free exercise of religion when
 15 it tends to coerce the individual to forego her sincerely held religious beliefs or to
 16 engage in conduct that violates those beliefs.”). The Defendants gave the Plaintiff
 17 an ultimatum—she must engage in conduct that violates her religious beliefs to
 18 maintain employment with the District or face termination of her beloved teaching
 19 job for adhering to her religious beliefs. This is exactly the type of burden the First
 20 Amendment protects against.

21 Further, as noted in the FAC, according to the District’s Annual Notification
 22 to Employees, “The Jurupa Unified School District does not discriminate on the
 23 basis of . . . religion . . . in any of its policies, procedures or practices” FAC, ¶
 24 90. The Annual Notification to Employees also states, “No district employee shall
 25 be discriminated against or harassed by any coworker, supervisor, manager, or other
 26 person with whom the employee comes in contact in the course of employment, on
 27 the basis of the employee’s actual or perceived . . . religious creed” *Id.*, ¶ 91.
 28 Additionally, California state law prohibits religious discrimination in the

1 educational context. *See* Cal. Educ. Code §§ 200, 220; FAC, ¶ 92. The FAC alleges
2 a number of violations in which the individual Defendants discriminated against the
3 Plaintiff on the basis of her religious beliefs. *Id.*, ¶¶ 114-15, 123-36. And instead of
4 accommodating her religious beliefs, the individual Defendants terminated the
5 Plaintiff's employment. *Id.*, ¶ 95.

6 What is even more alarming is that the individual Defendants' refusal to
7 accommodate the Plaintiff's religious beliefs directly falls under a category of
8 practices the District calls unlawful: "Actions and practices identified as unlawful"
9 include "[r]eligious creed discrimination based on an employee's religious belief or
10 observance . . . or based on the district's failure or refusal to use reasonable means
11 to accommodate an employee's religious belief, observance, or practice which
12 conflicts with an employment requirement." *Id.*, ¶ 97. At no point in time did the
13 Defendants negotiate with the Plaintiff in good faith to find an accommodation. *Id.*,
14 ¶ 79. While District policy notes that "[n]o employee who requests an
15 accommodation for any protected characteristic listed in this policy shall be
16 subjected to any punishment or sanction, regardless of whether the request was
17 granted," *Id.*, ¶ 98, the Plaintiff was not afforded any such protection. Instead of
18 making any efforts to accommodate her religious beliefs, the Defendants levied
19 meritless allegations against her, required her to comply with Directives inconsistent
20 with her religious beliefs, and then terminated her employment without just cause.
21 *Id.*, ¶¶ 38, 79, 95. Based upon the current legal landscape and the District policies,
22 the Defendants knew or should have known that their actions would violate the
23 Plaintiff's constitutional rights.

24 Because the Defendants have not shown they could not have reasonably
25 known their actions were violating the Plaintiff's constitutional rights and because
26 the Defendants waive their right to address the merits of qualified immunity on reply,
27 the individual Defendants are not entitled to qualified immunity. As such, the
28 individual Defendants are subject to liability for violating the Plaintiff's

1 constitutional rights.

2 **C. The Plaintiff's constitutional claims are not barred by the Eleventh**
 3 **Amendment because she seeks prospective injunctive relief.**

4 The Defendants argue that they are shielded from liability under the Eleventh
 5 Amendment because they are state entities that possess Eleventh Amendment
 6 immunity from Section 1983 claims. Mot. at 19-20. Generally, the Eleventh
 7 Amendment bars a state and state government actors from being sued in federal court
 8 without the state's consent. *Cardenas v. Anzai*, 311 F.3d 929, 934 (9th Cir. 2002).
 9 However, under the *Ex Parte Young* exception, "private individuals may sue state
 10 officials in federal court for *prospective* relief from ongoing violations of federal
 11 law, as opposed to money damages, without running afoul of the doctrine of
 12 sovereign immunity." *Koala v. Khosla*, 931 F.3d 887, 895 (9th Cir. 2019). The Ninth
 13 Circuit has noted that "suits against the [school] district in its own name are subject
 14 to the same Eleventh Amendment constraints as suits against the state." *Belanger v.*
 15 *Madera Unified Sch. Dist.*, 963 F.2d 248, 254 (9th Cir. 1992); *see also Barto v.*
 16 *Miyashiro*, No. 21-56223, 2022 WL 17729410, at *1 (9th Cir. Dec. 16, 2022)
 17 (recognizing that school district officials can be sued in their official capacities when
 18 there is an ongoing violation of federal law and where the relief sought is
 19 prospective).

20 The Defendants incorrectly assert that they are immune from all liability under
 21 the Plaintiff's Section 1983 claims. Mot. at 20. The Plaintiff's FAC is consistent
 22 with the current legal landscape regarding qualified and sovereign immunity. She
 23 specifically requests monetary damages from only the individual Defendants in their
 24 individual capacity. FAC, ¶¶ 121, 139, 148, 172. She does not seek monetary
 25 damages from the District or from the individual Defendants in their official
 26 capacities. For the reasons discussed in section IV.B, the individual Defendants in
 27 their individual capacities are not protected by qualified immunity, and thus, are
 28 responsible for monetary damages if the Plaintiff is successful on her Section 1983

1 claims. Consistent with the *Ex Parte Young* exception, the Plaintiff limits her
 2 declaratory and injunctive relief against the District and the individual Defendants
 3 in their official capacities. FAC, ¶¶ 120, 138, 147, 172.

4 A court “need only conduct a ‘straightforward inquiry into whether [the]
 5 complaint alleges an ongoing violation of federal law and seeks relief properly
 6 characterized as prospective.’” *Verizon Md. Inc. v. Pub. Serv. Comm’n of Md.*, 535
 7 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d’Alene Tribe of Id.*, 521 U.S. 261,
 8 296 (1997)). The Plaintiff requests declaratory relief that the Defendants’ Directives
 9 are unconstitutional as well as temporary, preliminary, and permanent injunctive
 10 relief requiring the Defendants to reinstate her employment. FAC, 23:4-14. The
 11 Plaintiff’s desired declaratory and injunctive relief would remedy the Defendants’
 12 ongoing violations of federal law. Because the Plaintiff only seeks prospective
 13 injunctive relief against the District and the individual Defendants in their official
 14 capacities, the Court should not dismiss the Plaintiff’s constitutional claims against
 15 any of the Defendants on Eleventh Amendment immunity grounds.

16 V. CONCLUSION

17 For these reasons, the Plaintiff respectfully requests that this Court deny the
 18 Defendants’ motion to dismiss.

19
 20 Respectfully submitted,

21
 22 DATED: August 30, 2023

ADVOCATES FOR FAITH & FREEDOM

23 *Julianne Fleischer*

24 By: _____

25 Julianne Fleischer, Esq.
 26 Attorneys for Plaintiff **Jessica Tapia**